IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2644 OF 2004

IN

SUIT NO. 2607 OF 1996

Datamatics Ltd. ..Plaintiffs

versus

Mr. Sunil Coutinho & Anr. ..Defendants

Mr. A. S. Doctor with C. Shah i/b. S. Shah for the Plaintiff.

Mr. Rajesh Kachare i/b. Y. M. Chaudhari for the Defendant No.2.

CORAM : D. G. DESHPANDE,J.

DATE : 7H DECEMBER,2004.

P.C. :

. Heard learned counsel for the parties. This is notice of motion by defendant No.2 for setting aside exparte decree. He is the guarantor. It is the case of the defendant no.2 that the writ of summons was not served upon him. He pointed out that as per Agreement Exhibit "B" which was entered by him with the plaintiffs as guarantor of defendant No.1, the plaintiffs should have served him or addressed all the correspondence to him at the

address given by him in the Agreement Exhibit 'B' i.e. 9/10, Bharathi Apartments, Ceaser Road, Amboli, Andheri (West), Bombay 400 058. This address is given in the agreement not only at one place but on internal page 15 it has been specifically stated that guarantor will be deemed to have been served if it is addressed to the guarantor at the aforesaid address.

. I specifically questioned to the counsel for the plaintiffs why writ of summons was sent to the defendant No.2 at his Madras address. There is no satisfactory explanation. It is tried to be contended that defendant No.2 is the father of defendant No.1. He was giving different addresses at different places. His address in passport was different. That is altogether irrelevant for the purposes of this suit. When the defendant No.2 in the agreement has specifically given his address then it was expected of the plaintiffs and they were legally bound to serve him at the address given and could not and should not have send the writ of summons at Madras or Chennai.

. Counsel for the plaintiffs contended that notices were ultimately published in Free Press Journal from Mumbai and this is sufficient service. He also pointed out that irregularity in service

cannot be a ground for setting aside the exparte decree. If the conduct of the plaintiffs is seen, it is apparent that the plaintiffs were trying to get exparte decree by serving the defendant No.2 at wrong address. In view of this, notice of motion is allowed. Exparte decree is set aside. Notice of Motion disposed of accordingly.

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